

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TONY MOSS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 258,599
<b>RELIABLE TRANSFER &amp; STORAGE</b>	)	
Respondent	)	
AND	)	
	)	
<b>FIREMAN'S FUND INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the September 29, 2000, preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. The Administrative Law Judge awarded claimant temporary total disability compensation and medical treatment, having found claimant proved that he suffered accidental injury arising out of and in the course of his employment and that he provided timely notice to respondent.

**ISSUES**

- (1) Did claimant suffer personal injury by accident arising out of and in the course of his employment on the date alleged?
- (2) Did claimant provide timely notice of accident as required by K.S.A. 44-520?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds, for preliminary hearing purposes, that the Order of the Administrative Law Judge should be affirmed.

Claimant alleged accidental injury on June 2, 2000, when lifting a dresser for respondent in Manhattan, Kansas. Claimant testified that he and a summer helper named Ross were moving the dresser when Ross slipped and claimant, pulling backwards, experienced a sudden pain in his back.

Respondent presented the testimony of Denny Bayer, respondent's manager. Mr. Bayer denied claimant suffered the accidental injury, testifying that he was initially told by claimant's mother, Mary Hagenmaier, that claimant suffered an injury at home. Mr. Bayer alleges Ms. Hagenmaier later told him that claimant suffered an accidental injury in Topeka while moving a refrigerator. Mr. Bayer testified that the refrigerator incident could not have occurred on June 2nd, as the only time claimant was in Topeka moving refrigerators was on his first day, May 16, 2000.

Ms. Hagenmaier testified that, when she initially contacted Mr. Bayer in person, she presented an off work slip to him and advised him that claimant's injury was work related, but that claimant would not be claiming workers' compensation because he felt it was only a minor muscle pull. She did, however, tell him that it occurred at work.

The conflict in testimony between claimant's mother and Mr. Bayer creates a credibility question in this matter. Generally, when an administrative law judge renders a decision regarding the credibility of witnesses who testify live before him, as in this case, the Appeals Board gives some deference to that opinion. The Administrative Law Judge is in the enviable position of being able to assess witness credibility from that in-person testimony. The Appeals Board does not have that luxury.

In the September 29, 2000, Order, Judge Benedict specifically comments on claimant's mother, finding her to be "very credible and very persuasive". The Appeals Board accepts the opinion of the Administrative Law Judge and finds that claimant, primarily through the testimony of his mother, did prove that he suffered accidental injury arising out of and in the course of his employment and did provide timely notice of accident pursuant to K.S.A. 44-520.

As is always the case, this finding is preliminary in nature and not binding upon the parties, but subject to a full presentation of the facts, pursuant to K.S.A. 1999 Supp. 44-534a.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated September 29, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2000.

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Ronald J. Laskowski, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director